

REMARKS

Responsive to the preliminary determination of lack of unity, Applicant provisionally elects Group I, claims 31-55, drawn to methods for measuring expression products of genes encoding CD4, with traverse.

Responsive to the further election of a combination of individual nucleotide sequences or polypeptide sequences, Applicant provisionally elects the combination of CD18 and CD49B molecules in claim 31 and PSGL-1 in claim 32, with traverse.

The reasons for traverse follow:

Determination of the lack of unity is possible only when the claims of a different group lack a "special technical feature" relative to another.

In the present case, Group I and Group II do share a special technical feature. Group I refers to a method for identifying Tr1 cells, and Group II refers to a method for enriching a sample in Tr1 cells using the method of Group I. That is, the first two steps a) and b) of the method of claim 56 of Group II make up the method of claim 31 of Group I.

Moreover, the Examiner's attention is respectfully directed to PCT Rule 13.2 in Part 1b of the Annex B of the administrative instructions under the PCT, which specifies that "special technical features" are those features that define a contribution which each of the inventions, considered as a whole, makes over the prior art. That is, PCT Rule 13.2 is art-based

and requires the citation of a publication showing the "special technical feature".

Thus, absent any showing of, for example, method steps a) and b) of claims 31 and 56 in a prior art reference, no determination of lack of unity can properly be made.

Indeed, in applying this same legal standard with similar claims, the International Searching Authority did not determine the unity of invention as lacking.

Therefore, the restriction requirement is improper as a matter of law, and withdrawal of the requirement is respectfully requested.

Conclusion

In view of the above remarks, a favorable action on the merits of all pending claims, in their full scope, is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our credit card which is being paid online simultaneously herewith for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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